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FISCAL IMPACT STATEMENT

LS 6902 **NOTE PREPARED:** Dec 31, 2005
BILL NUMBER: HB 1279 **BILL AMENDED:**

SUBJECT: Telecommunications.

FIRST AUTHOR: Rep. Murphy **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** **IMPACT:** State & Local
X **DEDICATED**
FEDERAL

Summary of Legislation: This bill specifies that a person that transmits communications over Internet Protocol-enabled services is not a public utility. It prohibits the Utility Regulatory Commission (IURC) from exercising jurisdiction over: (1) advanced and broadband services; and (2) information services. It prohibits, after June 30, 2007, the IURC from exercising jurisdiction over nonbasic telecommunications service.

The bill requires an incumbent local exchange carrier (ILEC) to continue to offer a flat monthly rate for unlimited local calling in exchange areas in which the provider offers basic telecommunications service on June 30, 2006. It provides that an extended area of service in which a provider offers basic telecommunications service on June 30, 2006, may not be reduced in area or scope without the IURC's approval. It also prohibits the IURC from exercising jurisdiction over basic telecommunications service in an exchange area if broadband services are available to at least 50% of households.

It requires the IURC to biennially identify and eliminate obsolete telecommunications regulations. It specifies that duties to provide dual-party relay services apply to a communications service provider that is required to provide such services under federal law. The bill also preserves the IURC's jurisdiction over: (1) dual-party relay services; (2) the 211 dialing code; (3) slamming and cramming laws; (4) interconnection agreements; and (5) rates charged by an ILEC to a pay phone service provider.

The bill prohibits a telecommunications provider that is: (1) exempt from IURC jurisdiction in one or more service areas; or (2) subject to relaxed regulation under a settlement agreement; from engaging in predatory pricing and certain anticompetitive practices at the retail and wholesale levels. It allows the IURC to: (1) establish service quality standards for services provided by an ILEC to another provider; and (2) require

quarterly reporting of service quality goals for other services offered by a provider. It also allows the IURC to: (1) order certain equitable remedies; and (2) impose a civil penalty of not more than $10,000; if a provider engages in a prohibited act.

The bill provides that a civil penalty may be imposed only for: (1) predatory pricing; (2) a willful failure to comply with service quality standards or goals; or (3) certain billing errors. It prohibits: (1) a communications service provider; or (2) the owner, operator, or developer of multitenant real estate; from limiting or restricting access to privately or publicly owned real property by a communications service provider authorized to provide service. It also provides that after June 30, 2006, the IURC is the sole franchising authority for the provision of video service in Indiana.

It provides that the holder of a state-issued franchise must comply with state and local laws governing the use of rights-of-way. It allows the holder of a local franchise on June 30, 2006, to: (1) continue providing service under the local franchise until the local franchise expires; or (2) terminate the local franchise and apply to the IURC for a state-issued franchise. The bill also provides that a provider that terminates a local franchise remains subject to any obligations owed to a private person under the franchise until the time the terminated franchise would ordinarily expire.

It requires the holder of a state-issued franchise to pay a quarterly franchise fee to each local government unit included in the holder's service area. It provides that the fee to be paid to a unit equals 5% of the provider's gross revenue generated in the unit. It prescribes requirements concerning public, educational, and governmental channel capacity and financial support. It prohibits a provider from denying access to video service to potential subscribers based on income. The bill also requires the IURC to submit to the Regulatory Flexibility Committee an analysis of various telecommunications issues.

Effective Date: Upon passage; July 1, 2006.

Explanation of State Expenditures: This bill contains provisions that will add responsibilities to the IURC and that will remove responsibilities from the Commission. Because the Commission's responsibilities encompass all utility types, it is unknown what proportion of the Commission's spending is related to telecommunications.

The bill also requires the IURC to report to the Regulatory Flexibility Committee on its analysis of various issues concerning the telecommunications industry, including the status of competition in the industry and the availability of various telecommunication services in Indiana. The bill requires the IURC to report to the Committee by November 15, 2007, and may be made in conjunction with its annual report to the Committee. Beginning with the annual report that is due July 1, 2008, the IURC will be required to report to the Committee every even-numbered year thereafter.

Explanation of State Revenues: *Public Utility Fund:* The operating budgets of the IURC and the Office of the Utility Consumer Counselor (OUCC) are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2005, fees from the utilities and fines generated approximately $11.7 M.

This bill removes entities that transmit communications over the Internet from the definition of a public utility. Therefore, these entities will no longer be required to pay the Public Utility Fee. Revenue to the Public Utility Fund will not decrease, however. Because the Commission bases its Public Utility Fee on the gross revenue of public utilities, the rate will increase for the remaining public utilities to create a fee that will generate the necessary amount of revenue.

Rates & Charges: Although the Commission will retain its jurisdiction over the provision of dual-party relay services, 211 services, slamming and cramming laws, interconnection agreements, and rates charged to pay phone service providers, telecommunications carriers providing basic telecommunications will no longer be subject to the Commission's approval for setting rates and charges for service. Such services are subject to the state Sales Tax. Revenues generated by telecommunications carriers' services may increase or decrease subject to fluctuation in the carriers' rates and charges. State Sales Tax revenue is deposited in the following funds: General Fund, Property Tax Replacement Fund, Public Mass Transportation Fund, Industrial Rail Service Fund, and the Commuter Rail Service Fund.

The IURC is to retain jurisdiction over the rates that may be charged by an incumbent local exchange carrier to a pay phone service provider.

Civil Penalties: The bill allows the IURC to impose a civil penalty of not more than $10,000 per violation if a telecommunications provider: is involved with predatory pricing; fails to comply with certain service quality rules; repeats billing errors due to intentional misconduct, an act of fraud or willful disregard; or enters a contract, agreement, or other arrangement that requires a person to restrict or limit the ability of a provider to obtain easements or rights-of-way on property used to provide communications services.

Civil penalties that are collected for violations that affect customers of a provider are to be refunded to the customers. Civil penalties collected due to one provider harming another shall be awarded to the harmed provider, and civil penalties collected for any a violation other than to customers or another provider are to be deposited in an account designated by the Indiana Finance Authority to be used for making loans and grants available for broadband developers.

Explanation of Local Expenditures: Municipal utilities are not subject to the Public Utility Fee.

Explanation of Local Revenues: *Video Service Franchises*: For video service providers who have local franchises, the provider may choose to continue providing the video service until the local franchise expires or terminate the local franchise to apply for a certificate from the IURC. If a provider chooses to terminate its local franchise, the provider will be required to pay any accrued but unpaid franchise fees still due under the local franchise and will remain subject to the rights, duties, and obligations of the local franchise.

Those providers that receive a certificate from the IURC will be assessed a fee of five percent of the provider's gross revenue received from providing service in a unit to be paid to that unit. Those providers who continue providing video service under their current local franchise will not be required to pay the five percent of gross revenue fee, but rather the fee set in the local franchise agreement. The fiscal impact of these provisions could vary among local units depending on the provisions contained in their current franchise agreements.

Background Information: Some municipalities, in their municipal code, allow for a franchise fee provision to be included in cable franchise agreements. One municipality in Indiana charges a franchise fee of 5% of the operator's gross revenue, less taxes and other fees charged by the unit. Other units allow for the fee to be set in the agreement, but not all units address the agreements in detail.

State Agencies Affected: Indiana Utility Regulatory Commission; Attorney General.

Local Agencies Affected: Units having franchises with video service providers.

Information Sources: Indiana Utility Regulatory Commission.

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